

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION
DOCKET CONTROL

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DATE: May 5, 2016
DOCKET NOS.: RR-03639A-16-0005

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY
(UPGRADE CROSSING)

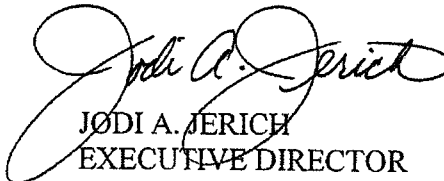
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 16, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:


JUNE 14, 2016 AND JUNE 15, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.


JODI A. JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

MAY 05 2016

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE CITY OF MESA TO
9 UPGRADE AN EXISTING CROSSING OF THE
10 UNION PACIFIC RAILROAD BY INSTALLING A
11 FOUR QUADRANT GATE SYSTEM AT DOBSON
12 ROAD IN THE CITY OF MESA, MARICOPA
13 COUNTY, ARIZONA, USDOT NO. 741 649G.

DOCKET NO. RR-03639A-16-0005

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 24, 2016

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Ms. Kelly Y. Schwab, Legal Department, on behalf of the
14 City of Mesa, Arizona;

15 Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &
16 Swartz, P.C., on behalf of the Union Pacific Railroad; and

17 Mr. Charles Hains and Mr. Robert W. Geake, Legal
18 Division, on behalf of Safety Division of the Arizona
Corporation Commission.

19 **BY THE COMMISSION:**

20 On January 11, 2016, the City of Mesa ("Mesa") filed with the Arizona Corporation
21 Commission ("Commission") an application requesting approval for the Union Pacific Railroad
22 Company ("Railroad") to upgrade an existing crossing with the installation of a four quadrant gate
23 system at Dobson Road in the City of Mesa, Maricopa County, Arizona at USDOT No. 741 649G
24 ("Application").

25 On January 21, 2016, by Procedural Order, a hearing was scheduled for March 24, 2016.

26 On March 2, 2016, Mesa filed documentation that it had provided public notice in accordance
27 with the Commission's Procedural Order.

28 On March 24, 2016, a full public hearing was convened in front of a duly authorized

Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Mesa, the Railroad and the Commission's Safety Division, Railroad Safety Section ("Staff") were present with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 11, 2016, Mesa filed an Application requesting an Opinion and Order from the Commission approving an agreement between Mesa and the Railroad to upgrade an existing at-grade crossing with the installation of a four quadrant gate system at Dobson Road in the City of Mesa, Maricopa County, Arizona at USDOT NO. 741 649G.

2. Prior to the filing of the Application, representatives of Mesa, the Railroad and Staff participated in a diagnostic review of the proposed improvements at the crossing. The parties who were present all agreed that the proposed enhancements would improve safety at the crossing.

3. Mesa is seeking Commission approval to upgrade the existing at-grade crossing at Dobson Road, a six lane roadway, which consists of three northbound lanes and three southbound lanes. The Railroad's right of way runs east to west at Dobson Road.

4. Mesa's installation of a four quadrant gate system at the Dobson Road at-grade crossing will assist Mesa to qualify for a "Quiet Zone" classification for a three mile stretch of the Railroad's tracks in Mesa. The crossing currently has automatic gates and flashing lights and bells on the approaches to the crossing in both directions. The proposed improvements will add new automatic gates with LED flashing lights and bells on the departure side of each crossing to deter vehicles from driving in the opposite direction and going around the approach gates when they are down. After the improvements are made, the Railroad will maintain the warning devices and the crossing surface on Dobson Road.

1 5. On March 2, 2016, Mesa filed documentation that it had provided public notice of the
2 Application and hearing thereon, pursuant to the Commission's Procedural Order, by publishing notice
3 in the *East Valley Tribune*.

4 6. The hearing was held as scheduled on March 24, 2016.

5 7. According to the Staff Memorandum, the areas adjacent to the Dobson Road at-grade
6 crossing consist primarily of land which is zoned for light industrial development and general
7 commercial development.

8 8. Mr. Joseph Schroeder, Mesa's supervising engineer, testified in support of the
9 Application.

10 9. According to Mr. Schroeder, on December 17, 2014, Mesa notified FRA that it intended
11 to establish a "Quiet Zone" in Mesa to restrict the Railroad's horn use 24 hours a day, seven days a
12 week. (Ex. M-1)

13 10. Mr. Schroeder testified that the Dobson Road at-grade crossing was included in the area
14 that was to be part of the Quiet Zone. (Tr.7:22-24)

15 11. Mr. Schroeder stated that the Dobson Road at-grade crossing is approximately a quarter
16 mile south of Main Street in Mesa and is one of its main arterial streets. (Tr.8:1-5)

17 12. Mesa was originally granted an easement in November 1975 for the Dobson Road
18 crossing of the Railroad's right of way. (Ex.S-4)

19 13. On December 30, 2015, Mesa and the Railroad entered into an agreement wherein it is
20 provided that Mesa will make improvements to the Dobson Road at-grade crossing. (Ex. M-6)

21 14. Mr. Schroeder stated that, with the installation of exit gates, safety will be improved at
22 the crossing to preclude vehicles from being driven around the existing approach gates. (Tr.11:1-6)

23 15. According to Mr. Schroeder, the improvements will be installed by the Railroad and
24 paid for by the City at a cost of in excess of \$561,000. (Tr.11:7-12)

25 16. Mr. Schroeder testified further that there have been no objections to the proposed
26 upgrades to the Dobson Road at-grade crossing. (Tr.12:18-20)

1 17. Mr. Schroeder stated that the driving force behind the City's desire for a Quiet Zone is
2 that residents who reside in the area of the Railroad's tracks desire a "cessation of train horns."
3 (Tr.14:13-19)

4 18. The planned Quiet Zone will extend for approximately three miles.

5 19. Mr. Schroeder testified that the quadrant gates will control all traffic in the road way
6 where the crossing is located and the primary purpose of the improvements is to preclude inadvertent
7 crossing or deliberate crossing where the roadway crosses the Railroad's tracks. (Tr.16:6-14)

8 20. The Mesa Transportation Department has determined that a Quiet Zone with the
9 proposed improvements will provide the safety necessary for the crossing without the construction of
10 a grade separated crossing. (Tr.17:2-9)

11 21. Mr. Schroeder stated that with the proposed improvements to the Dobson Road at-grade
12 crossing, the public interest would be served by improving safety and assisting in implementing the
13 desired Quiet Zone. (Tr.17:10-15)

14 22. Upon the completion of the four quadrant gate improvements, the gates will block both
15 the approaches to the crossing and the exits from the crossing, and will block all vehicular traffic.
16 (Tr.19:3-13)

17 23. Mr. Schroeder stated that Mesa's Transportation Department has determined that grade
18 separation is not feasible or required now or in the foreseeable future. According to Mr. Schroeder,
19 grade separation would be extremely costly and would negatively impact residents and businesses who
20 would have their access severely curtailed with the construction of a grade separated crossing of
21 Dobson Road. (Tr.20:6-16)

22 24. Mr. Chris Watson, the Commission's Grade Crossing Inspector, and the Assistant
23 Supervisor for Staff, testified that he had prepared the Staff Memorandum which describes the nature
24 of the City's proposed improvements to the Dobson Road at-grade crossing. (Tr.23)

25 25. Mr. Watson testified that the four quadrant gate system being proposed by Mesa would
26 be the first such system to be constructed in Arizona. (Tr.25:1-7)

27 26. According to Mr. Watson, the installation of a four quadrant gate system automatically
28 qualifies the Dobson Road crossing for participation in a Quiet Zone. (Tr.26:17-21)

1 upgrade as described in the Application within 15 months of the effective date of this Decision.

2 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in
3 writing, within 10 days of both the commencement and completion of the crossing upgrade, pursuant
4 to A.A.C. R14-5-104.

5 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
6 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10 CHAIRMAN _____ COMMISSIONER _____

11
12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

13
14 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
15 of the Arizona Corporation Commission, have hereunto set my
16 hand and caused the official seal of the Commission to be affixed
17 at the Capitol, in the City of Phoenix, this _____ day
18 of _____ 2016.

19 JODI JERICH
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____
24 MS:aw

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639A-16-0005

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